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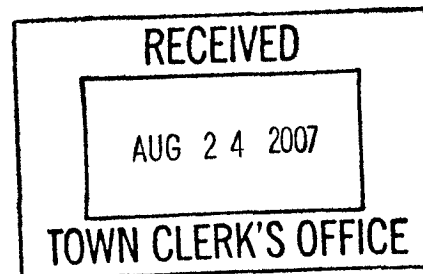
## TOWN OF NEW WINDSOR

### ZONING BOARD OF APPEALS

#### Regular Session

Date: AUGUST 27, 2007

#### AGENDA



7:30 p.m. – Roll Call

Motion to accept minutes of AUGUST 13, 2007 meeting as written.

#### PRELIMINARY MEETINGS:

1. **LAPIDUS/KOCH (07-57)** Request for variance of 4,164 s.f. of minimum lot area for Lot #1 (As referred by Planning Board) located on Lake Road in an R-4 Zone (**58-5-1**)
2. **NORMAN EDWARDS (07-55)** Request for 15 ft. Rear Yard Setback for proposed attached deck and gazebo at 2643 Liberty Ridge in an R-3 Zone (**64-2-31**)

#### PUBLIC HEARINGS:

3. **ALBERT & MARY BERLINGIERI (07-35)** Request for 25 ft. Side Yard Setback and; 27 ft. Total Side Yard Setback for existing deck at 432 Bull Road in an R-1 Zone (**52-1-13.5**)
4. **PETROLI ENTERPRISES INC. (07-39)** Request for interpretation an/or use variance for equipment sales and rental at 898 Little Britain Road in an NC zone (**3-1-23.1**)
5. **FRANCIS BEDETTI (07-31)** Request for :

**SHED:** 7 ft. Side Yard Setback  
7 ft. Rear Yard Setback

**ADDITION:** 6.5 ft. Side Yard Setback  
10.7 ft. Total Side Yard Setback

For proposed Shed and Addition at 5 Continental Drive in an R-4 Zone (**45-4-9**)

6. **JASON LOWE (07-33)** Request for 14 ft. Rear Yard Setback for proposed 14 ft. X 26 ft. attached rear deck at 519 Shore Drive in an R-4 Zone (**62-9-35**)
7. **TOWER MANAGEMENT (07-34)** Request for 64 sq. ft. for existing freestanding sign at 366 Old Forge Hill Road in an R-4 Zone (**49-1-20.1**)
8. **VITO A. RIZZI (07-26)** Request for interpretation and/or use variance to extend commercial use into R-4 Zone at 287 Windsor Highway in a C/R-4 Zone (**35-1-52**)

(NEXT MEETING – SEPTEMBER 10, 2007)

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TOWN OF NEW WINDSOR  
ZONING BOARD OF APPEALS

August 27, 2007

MEMBERS PRESENT: MICHAEL KANE, CHAIRMAN  
KIMBERLY GANN  
KATHLEEN LOCEY  
ERIC LUNDSTROM  
PAT TORPEY

ALSO PRESENT: MICHAEL BABCOCK  
BUILDING INSPECTOR

ANDREW KRIEGER, ESQ.  
ZONING BOARD ATTORNEY

ABSENT: MYRA MASON  
ZONING BOARD SECRETARY

REGULAR MEETING

MR. KANE: I'd like to call to order the August 27, 2007 meeting of the New Windsor Zoning Board of Appeals.

APPROVAL OF MINUTES DATED AUGUST 13, 2007

MR. KANE: Motion to accept the minutes of August 13, 2007 as written.

MR. LUNDSTROM: So moved.

MS. GANN: Second it.

ROLL CALL

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MS. GANN	AYE
MR. LUNDSTROM	AYE
MS. LOCEY	AYE
MR. TORPEY	AYE
MR. KANE	AYE

PRELIMINARY\_MEETINGS

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LAPIDUS/KOCH\_(07-57)

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Mr. Charles Brown appeared before the board for this proposal.

MR. KANE: Request for variance of 4,164 square foot of minimum lot area for lot number 1 as referred by planning board located on Lake Road, R-4 zone. Just speak loud enough for this young lady over here to hear you.

MR. BROWN: Charles Brown, Tectonic Design, 3125 Route 9W, New Windsor. I'm the engineer for the applicant. The proposal is a 2 lot subdivision of an existing 1.9 acre parcel. The applicant is the sister of the owner of the property. And the purpose of the subdivision is to create a building lot for her so that she can build herself a house. She's downsizing because the existing house that she has is too large.

MR. LUNDSTROM: Do we have a proxy on file?

MR. KANE: We'd need that for the public hearing.

MR. BABCOCK: I'm sure we do have it.

MR. BROWN: Should have been submitted. If not, I'll make sure that it is. The variance requested is for the gross lot area of the lot containing an existing residence, all other provisions within the zone are met including the net area for both lots and that's about it. We also are under the buildable area for the existing residence, I'm not sure if we need a variance for that existing residence which is shy of the 1,200 square foot so I don't know if a variance is required for that because it's existing.

MR. BABCOCK: No, I'm sure that house is built before

'66.

MR. BROWN: That house is ancient.

MR. KANE: It predates zoning. At some point it may come up, you know, with the home with a bank if it was sold or refinanced, they'd want to get that done but I don't think that's anything we have to consider right here.

MR. BABCOCK: No. There is a proxy on file, Mr. Chairman.

MR. KANE: Okay, yeah, I don't think we have to address that right here. Again, unless you want to put that in you can clear that if the homeowner wants to clear that up now.

MS. LAPIDUS: That's not necessary.

MR. LUNDSTROM: Can you show us on the plot plan which is the existing house and which is the new proposed house, taking the one that's there so everybody can benefit?

MR. BROWN: The existing house is the one that's hatched and the proposed house is right there.

MR. LUNDSTROM: Okay.

MR. KANE: Cutting down any substantial vegetation, trees in the building of this?

MR. BROWN: No, it's actually mostly lawn, meadow, there are a few large trees which would be maintained.

MR. KANE: Create water hazards or runoffs?

MR. BROWN: No.

MR. KANE: Any easements coming through the area?

MR. BROWN: We'd be creating a common area driveway easement as part of the subdivision.

MR. KANE: So when all is said and done one lot, lot number 2 is going to be just above the required minimum lot area and lot number 1 is going to be 4,000 square feet short?

MR. BROWN: Correct.

MR. KANE: Less than 10%.

MR. BROWN: Correct.

MR. KANE: I have no further questions at this point. Any further questions from the board at this point? I'll accept a motion.

MS. LOCEY: I'll offer a motion to schedule a public hearing on the application of Lapidus/Koch as detailed in the agenda of the Zoning Board of Appeals meeting dated August 27, 2007.

MS. GANN: I'll second the motion.

ROLL CALL

MS. GANN	AYE
MR. LUNDSTROM	AYE
MS. LOCEY	AYE
MR. TORPEY	AYE
MR. KANE	AYE

NORMAN\_EDWARDS\_(07-55)

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MR. KANE: Request for 15 foot rear yard setback for proposed attached deck and gazebo at 2643 Liberty Ridge.

Mr. Norman Edwards appeared before the board for this proposal.

MR. KANE: You want to give your name and address and? Speak loud enough for the young lady, tell us what you want to do.

MR. EDWARDS: Norman Edwards, 2643 Liberty Ridge, New Windsor. Requesting variance to build a deck with a gazebo at the property. It will be 15 feet from the nearest fence and 14, yeah, 15 feet from the nearest fence.

MR. KANE: Cutting down any trees, substantial vegetation in the building of the deck?

MR. EDWARDS: No, sir.

MR. KANE: Creating any water hazards or runoff?

MR. EDWARDS: No.

MR. KANE: The deck similar in size and nature to other decks in your neighborhood?

MR. EDWARDS: Yes, it is.

MR. KANE: Currently, you just have a four step type stairs coming out from the closing doors?

MR. EDWARDS: That's correct.

MR. LUNDSTROM: If I may, are there other decks in your neighborhood that are that close to the property line?

MR. EDWARDS: Yes.

MR. KANE: Seeing the overall dimensions of the deck it's coming out about eight foot?

MR. EDWARDS: I think it's 10 x 12.

MR. KANE: Basically, a 10 x 12 square and the gazebo right off on the corner on the side?

MR. EDWARDS: Yes.

MR. KANE: We've got some photos. Any easements running through the area where you want to put the deck? I don't see any.

MS. LOCEY: There are other gazebos in the neighborhood?

MR. EDWARDS: Not in close proximity.

MS. LOCEY: But in the development?

MR. EDWARDS: Yes.

MS. GANN: How high would the gazebo go up?

MR. EDWARDS: It's going to be at the same level of the house.

MS. GANN: How high does it go?

MR. EDWARDS: At least about 10 feet, I think.

MR. KANE: Mike, if I'm reading this correctly, they have 33 feet going from the back so no matter what kind of any kind of deck he wanted to put back he'd need some kind of a variance?



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MR. BABCOCK: Well, he would be allowed a three foot deck.

MR. KANE: I have enough. Any further questions? Pat, any questions?

MR. TORPEY: No.

MR. KANE: Accept a motion to set up for a public hearing.

MS. GANN: I'll offer a motion to set Norman Edwards for a public hearing for his request for 15 foot rear yard setback for proposed attached deck and gazebo at 2643 Liberty Ridge.

MR. TORPEY: I'll second that motion.

ROLL CALL

MS. GANN	AYE
MR. LUNDSTROM	AYE
MS. LOCEY	AYE
MR. TORPEY	AYE
MR. KANE	AYE

PUBLIC HEARINGS:

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ALBERT & MARY BERLINGIERI (07-35)

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MR. KANE: Request for 25 foot side yard setback and 27 foot total side yard setback for existing deck at 432 Bull Road.

Mr. and Mrs. Berlingieri appeared before the board for this proposal.

MR. KANE: Same as in the preliminary hearing, state your name and address, speak loud enough and tell us what you want to do.

MRS. BERLINGIERI: Mary and Albert Berlingieri, 432 Bull Road, Staten Island, New York.

MR. BERLINGIERI: Rock Tavern, New York.

MR. BERLINGIERI: Al Berlingieri. We'd like to get the variance so we can get a permit to close on this deck, actually bring it up to legal code or the code that's in existence now cause it's been up there since 1991.

MR. KANE: Answered that question. Cut down any trees or substantial vegetation in the building of the deck?

MR. BERLINGIERI: Not at all.

MR. KANE: Create any water hazards or runoffs?

MR. BERLINGIERI: Not at all.

MR. KANE: Any easements running through the area where the deck is?

MR. BERLINGIERI: Not to my knowledge, no.

MR. KANE: Question was answered the deck was built in

1991.

MR. BERLINGIERI: Yes.

MR. KANE: Has there been any complaints formally or informally about the deck?

MR. BERLINGIERI: Not at all.

MR. KANE: Is the deck similar in size and nature to other decks that are in your particular neighborhood?

MR. BERLINGIERI: I believe so, mine is on the side of the house, everybody else's is in the back of the house I believe except for maybe one other deck.

MR. KANE: About how big is the deck?

MR. BERLINGIERI: It's 2 tier, it's 16 x 16 and 12 x 20 the lower section.

MR. KANE: At this point, I'll open it up to the public, ask if there's anybody here for this particular hearing. Okay, just ask you to state your name and address and ask whatever questions you have.

MR. INGINITO: Philip Inginito, 438 Bull Road. The deck faces towards my house, I've been living there nine years, no problem with it.

MR. KANE: Thank you very much, sir. Anybody else for this particular hearing? Seeing as there's not, we'll close the public portion of the hearing and ask, I would say ask Myra how many mailings we had but I'll ask Mike.

MR. BABCOCK: There was 74 mailings on August 20 and no returns. Is that correct, 74?

MR. BERLINGIERI: I believe there were 24 cause I

licked all those envelopes myself and it was actually the end of July.

MR. BABCOCK: This says 74 for some reason.

MR. KANE: But no returns.

MR. BABCOCK: No returns.

MR. KANE: You understand that if the board does approve your request that you still have to meet all of the regulations provided by the building department?

MR. BERLINGIERI: Absolutely.

MR. KANE: Any further questions?

MR. LUNDSTROM: Just one, one of the things that may have just been a slight of tongue, did you say something about closing?

MS. GANN: Are you closing on your house?

MR. BERLINGIERI: No, not right now.

MR. LUNDSTROM: Just wanted to clear that up for the record.

MS. LOCEY: I think what he meant to say he wants to get a Certificate of Occupancy for the deck.

MR. BERLINGIERI: Right, C of O for the deck, I want to make it all legal.

MR. KANE: Any further questions? I'll accept a motion.

MR. LUNDSTROM: I'll offer a motion that the application of by Albert and Mary Berlingieri request for a 25 foot side yard setback and 27 foot total side

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yard setback from existing deck at 432 Bull Road in an R-1 zone, section, block and lot 52-1-13.5 be approved by this board.

MR. TORPEY: I'll second that.

ROLL CALL

MS. GANN	AYE
MR. LUNDSTROM	AYE
MS. LOCEY	AYE
MR. TORPEY	AYE
MR. KANE	AYE

PETROLI\_ENTERPRISES\_INC.\_ (07-39)

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Mr. James Petro appeared before the board for this proposal.

MR. KANE: Request for interpretation and/or use variance for equipment sales and rental at 898 Little Britain Road.

MR. PETRO: My name is Jim Petro, I own Petrolli Enterprises a hundred percent and I'm here for a clarification or interpretation of the use variance that was given in 1998 by this board or other people who are sitting on this board. And that's basically it. So I need an interpretation of the variance that's on the plan which states auto rental, equipment rental, that's the two variations, auto rental and sales and equipment rental and sales.

MR. KANE: Basically as per our preliminary discussion everything there is still basically going to be with repairs, diesel, gas engines, similar type use to what it was previously?

MR. PETRO: I don't think there will be any change, instead of auto might be a backhoe, that would be your biggest change.

MR. KRIEGER: The variance did it say auto or car?

MR. PETRO: Auto.

MR. BABCOCK: There were areas throughout the process that said car and the variance stated auto and that's why really he's here because just for a clarification I guess I could have told him that he couldn't sell a pickup truck where it said a car.

MR. KRIEGER: Well, car is sort of all inclusive term so the car appeared throughout the process.

MR. BABCOCK: There was several pieces of paper where it said car and several pieces that said auto.

MR.. KANE: Let the record also show that we have a letter from the town attorney from the Town of New Windsor basically stating that through his, well, I'll read it. To Whom It May Concern: I have been advised that there is a proposed lease between James Petro and an entity affiliated with Volvo whose principal business is the sale and rental of various forms of heavy and light equipment, much of which is gas powered. It comprises such things as backhoes and bulldozers and also lighter equipment. The question has been presented as to whether the sale and repair of such equipment is permitted at SBl 3-1-23.1. A review of the Town zoning map indicates that this is in an NC (Neighborhood Commercial zone). The sale or rental of the above mentioned equipment is not specifically permitted in the Neighborhood Commercial zone but is specifically permitted in other zones. However, the property in question has an extended use history of the sale and repair of automobiles. To the extent that both businesses involve the sale and repair of motor vehicles it would appear based on the facts presented to me that this would be a continuation of a non-conforming use which is within the NC zone at that particular location. This matter is appropriate for interpretation by the Zoning Board of Appeals. Of course, I cannot nor will I substitute my judgment for the ZBA. However, based upon the facts as presented, I do not see at this location any impediment to the ZBA rendering an interpretation that the proposed business would be a continuation of a pre-existing non-conforming use and thus would constitute a permitted use. If you require anything further, please advise. Michael Blythe, attorney for the Town of New Windsor. I will open it up and ask if anybody's here for this particular hearing?

MR. CROTTY: Good evening, my name is Phil Crotty, I'm a friend of Jim Petro. Actually, I'm a property owner on the block with him at 1059 Little Britain Road. I just want the record to indicate that I support the positive interpretation of the application.

MR. KANE: Thank you, sir. Anybody else for this particular hearing? At this point then I would close the public portion of the hearing and ask how many mailings we had.

MR. BABCOCK: We had 20 mailings with no returns.

MR. KRIEGER: Just for the record this property is located on a busy commercial highway?

MR. PETRO: Correct.

MR. KRIEGER: And it's been, it consists of a couple buildings, a front yard, back yard, some paved, all used for parking of vehicles at some point?

MR. PETRO: Correct.

MR. KRIEGER: It's set up for that purpose and intended for that purpose the sale of--

MR. PETRO: It's been that way for quite a few years.

MR. KRIEGER: It's surrounded by other commercial properties?

MR. PETRO: Yes, we have a deli on one side, girlie place across the street and the Nextel, Nextel Telephone Company.

MR. KRIEGER: There's a bar across the street?

MR. PETRO: Flooring place and bar.



MR. KRIEGER: Liquor store and that's the neighborhood, correct? I just wanted to have that in the record.

MR. KANE: Any further questions? I'll accept a motion then.

MR. LUNDSTROM: I'll offer a motion that the zoning board render an interpretation of the proposed business would be a continuation of a pre-existing, non-conforming use and this would constitute a permitted use pertaining to the application of Petrolli Enterprises as presented on the agenda of the Zoning Board of Appeals for August 27, 2007.

MS. LOCEY: I'll second that.

ROLL CALL

MS. GANN	AYE
MR. LUNDSTROM	AYE
MS. LOCEY	AYE
MR. TORPEY	AYE
MR. KANE	AYE

FRANCIS\_BEDETTI\_(07-31)

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MR. KANE: Request for shed, 7 foot side yard setback and 7 foot rear yard setback and addition, 6.5 foot side yard setback and 10.7 foot total side yard setback for proposed shed and addition at 5 Continental Drive.

Mr. Francis Bedetti appeared before the board for this proposal.

MR. BEDETTI: Good evening, how are you? I'm requesting two variances, one for, to replace an existing shed that I have just to make it a little bit bigger. On the diagram, my building permit you'll see the exact footprint of the existing shed as compared to the installation of the new shed.

MR. KANE: Now, the new shed, you're replacing an older shed?

MR. BEDETTI: That's correct, I submitted photos and all of my building permits, it depicts the existing shed that I've got now and basically the number 1 and number 2 side are going to stay exactly the same, I'm just going to encroach on my neighbor's setbacks a little bit.

MR. KANE: Cutting down any trees, substantial vegetation?

MR. BEDETTI: No, sir.

MR. KANE: Any easements where the shed is?

MR. BEDETTI: No, sir.

MR. KANE: Has there been any complaints about the existing shed formally or informally?

MR. BEDETTI: No, sir.

MR. KANE: I don't know if you've got the footprint there.

MR. BEDETTI: Basically the existing one, so the number 1 number 2 side of the new shed are basically going to stay the same, I'll just need a variance for here.

MR. KANE: Three foot and the existing one was three feet off the property line?

MR. BEDETTI: Right.

MR. KANE: How long did the old shed, how long was that in existence?

MR. BEDETTI: Fifteen years.

MR. KANE: And again no complaints?

MR. BEDETTI: No, sir.

MR. KANE: That's on the shed, you want to speak to us on the proposed addition?

MR. BEDETTI: Yes, basically, I've got a Schoonmaker ranch and as most people know with the Schoonmaker ranches your living room, dining room aren't very big. As the family grows and people come over for the holidays I just don't have the room.

MR. KANE: And your addition is only coming out eight foot?

MR. BEDETTI: That's correct.

MR. KANE: You're leaving 13.5 feet for the side?

MR. BEDETTI: Yes.

MR. KANE: Side yard setback is 15, Mike?

MR. BABCOCK: Side yard today is 20, it's changed, that's the new zoning that just came in effect.

MR. BEDETTI: Yeah, that won't house any sleeping quarters or bathroom facilities, anything like that, just to make the living room, dining room a little bit bigger. Once again, there should be a photo of the front of the house and you'll see the side that we're going to be going out.

MR. KANE: Mike, the total side yard setback needs it because the deck's going to be on one side and the addition is on the other side of the house. These are going on either side so we need to do a total?

MR. BABCOCK: No, apparently he doesn't meet the total on the opposite side of the house, if you look at the house, the new zoning since he's going closer to the property line is 20 with a total of 40 and he only has a total of 29 so it requires him.

MR. KANE: So you've got to add both sides for the total?

MR. BABCOCK: That's correct.

MR. KANE: Okay, at this point, I'll ask if there's anybody in the audience for this particular hearing?

MS. BATAPAGLIA: My name is Jacqueline Batapaglia. I live at 8 Parade Place. Because I think I'm at least a few blocks from their family, I don't think I qualified for one of the letters that notifies people of a zoning variance. Might I ask can I take a look at those drawings? It might affect or modify my comments because I can't picture where these additions are.

MR. BEDETTI: There's the shed in the back yard.

MS. BATAPAGLIA: So this is your neighbor's fence, yes?

MR. BEDETTI: That's correct.

MS. BATAPAGLIA: How close to the property line is your neighbor's fence? Is it like sitting right on it?

MR. BEDETTI: I don't know.

MR. BABCOCK: It appears to be, yes.

MS. BATAPAGLIA: It appears to be okay, so this distance it looks like it tapers going towards the back between the existing sheds and the property line is how many feet?

MR. BEDETTI: Well, actually this reveal back here is much greater than what I'm requesting for a variance because it's their corner here that's going to be very close because it does taper and you're absolutely correct this area opens up, this is probably an area of maybe seven or eight feet away from my property line but that's the spot.

MS. BATAPAGLIA: And you said that you're replacing this shed with a larger one?

MR. BEDETTI: That's correct, let me show you, hold on one second here.

MS. BATAPAGLIA: I'm learning.

MR. BEDETTI: Here's the existing one, the dotted line is going to be where the new one is and that's going to be three foot away from my neighbor's fence and basically this will be three foot here and because this actually tapers this is actually a greater distance.

MS. BATAPAGLIA: Your new shed is 12 x 16 just so it

helps me visualize it our house is 24 x 40 so 12 is half of my width of my house and 16 is just a little shy of half the length of my house, so his new shed is really just a little under half the size of my house.

MR. BABCOCK: It's about one quarter of your house.

MS. BATAPAGLIA: Yeah, I'm sorry you're correct, okay, I see next to your existing shed that you also have a canopy for what looks like construction equipment?

MR. BEDETTI: That's for what I own, personal use, I've got a place upstate that I use it but my new shed I will be able to put it in there, that's the whole idea of getting 12 x 14, 16.

MS. BATAPAGLIA: So you're not going to use it as if I can be so flexible use the term as a garage for heavy equipment?

MR. BEDETTI: That's a shed for my yard tractor, yes.

MS. BATAPAGLIA: Is this what you call what you mow with?

MR. BEDETTI: Yes, I use that for my place upstate, that's absolutely correct.

MS. BATAPAGLIA: How do you get it up there?

MS. LOCEY: Doesn't matter.

MS. BATAPAGLIA: Thank you for that. If I recall next is the addition to the house, that's our next thought.

MR. KANE: If you look right here here's his existing house, there's a side line, he's coming just coming out 8 more feet.

MS. BATAPAGLIA: Eight more feet on this side, okay,

and we're now supposed to have 20 feet and this changes it to 13?

MR. KANE: It's .5.

MS. BATAPAGLIA: So 13.5 but your addition isn't going to be level with the floor with the porch?

MR. BEDETTI: No.

MS. BATAPAGLIA: Didn't you get a zoning variance for the porch if I recall?

MR. BEDETTI: Yes, I did.

MS. BATAPAGLIA: And I might of forgotten but didn't you also get a zoning variance for the other end of the house?

MR. BEDETTI: No, I did not.

MS. BATAPAGLIA: That fit within the amount of space that you had?

MR. BEDETTI: No, I did not.

MS. BATAPAGLIA: Then when you put the addition on your house on the opposite side?

MR. BEDETTI: That was within the zoning requirements at the time.

MS. BATAPAGLIA: That was within the requirements?

MR. BEDETTI: That's correct.

MR. BEDETTI: I make it a point that none of my neighbors that I directly border are here, okay.

MR. KANE: I know.

MS. BATAPAGLIA: I'm at least three blocks away and I know when he had the porch on the front which is very nice by the way.

MR. BEDETTI: Thank you.

MR. KANE: May I ask one question, if you're three blocks away, why the detailed specifics about this home?

MR. BABCOCK: She's trying to learn.

MS. BATAPAGLIA: There's more to it than that. I have lived there for 35 years and increasingly we see even more sheds, bigger sheds closer to the line sheds, these fences that are I don't know how high but as they appear in his new in the pictures from his neighbors which again require zoning variances and the influx of businesses in our homes which then minimizes the amount of space we have for family functions because we have business space in our yards and/or in our homes. So what we're seeing is an incremental infringement on the one family residential concept where I live in that subdivision development whatever phrase is appropriate for zoning in order to accommodate businesses and ancillary equipment and it's again in increments and adding to that the number of us who have had mom come live with us and we build an entire for all practical purposes house addition with a separate entrance, separate driveway.

MR. BEDETTI: Mr. Chairman, this doesn't affect my--

MR. KANE: This doesn't affect your application.

MS. BATAPAGLIA: You asked me why I was so concerned and that's because in our area we're seeing change that we'd rather not because we purchased one family residential and as we see more and more spread and the



encroachment on our property lines which is why some of us bought homes knowing that we would always have a living environment where we had the space between homes, we're at least interested in what our neighbors do.

MR. LUNDSTROM: Mr. Chairman, may I interrupt? Ma'am, I think your comments are very appropriate and very pertinent but I think what they probably would be better addressed to is the comprehensive planning committee who could then take some of those recommendations. With us here tonight our hands are tied, the only thing we can do in this particular case is vote yes or no on the variance as requested. And I think the points you're bringing up are very important and I think I would ask you to contact the comprehensive planning committee and at least share those ideas with them.

MS. BATAPAGLIA: In the past you folks have when I have commented on things like that you have told me that when you allow a variance for something that it does not set a precedent for the future.

MR. KANE: That's correct.

MS. BATAPAGLIA: But we're saying that it's being more difficult to maintain the character of the development. I would like to, can I express a personal opinion cause up to now I think this is fact.

MR. KANE: I'd like you to stay with the issue at hand which is this piece of property.

MS. BATAPAGLIA: Thank you. I think his addition since he said he needs more space for his family and the, in the living room and dining room area for families I think this is a wonderful, wonderful thing, you know, I see that it is on the other side of his house as opposed to the other side where a paved driveway goes

back like towards that shed area, it's obvious in the picture that it is not paved all the way back, it just appears to be paved along the side of his house going back which gives the appearance of garage type storage area in the back as opposed to a shed.. So I guess it's up for you folks to decide and the family is so well liked, you couldn't find a single person who would want to come tonight, they might object to it but they don't want to offend such a great neighbor, I mean, people not nearby but at a distance but we're concerned on the integrity of our one family residential.

MR. BEDETTI: Just a point of reference, I've been in that area for 47 years so I just didn't move into this area, born and raised in the town, born and raised in that area.

MR. KANE: Ma'am, are you for or against?

MS. BATAPAGLIA: His addition I say go for it, providing nobody else has an objection, it looks like he's keeping the lines on the front of the house. He said that he's not extending the porch which even that would be okay but I'm not overly thrilled with that on both sides. We're getting right up the property lines but very nice. I thank you very much and a bit of an apology for coming out tonight for what might be interpreted as not being pleased and even though he's been here for 47 years, you look even younger than that when they lived there about one year and his wife requested a variance for the side for--

MR. KANE: Not to be offensive but we've got--

MS. BATAPAGLIA: You've got business.

MR. KANE: I don't need his whole history, I'm not being offensive, we need to move on. Okay?

MS. BATAPAGLIA: Thank you.

MR. KANE: Thank you very much. Anybody else for this particular hearing? Seeing as there's none, I'll close the public portion and just going to bring it back to Mike for how many mailings we had.

MR. BABCOCK: Fifty-nine and no returns.

MR. KANE: Cutting down any trees, substantial vegetation?

MR. BEDETTI: No, sir.

MR. KANE: For either the deck or well the shed is going right back into the where the other one was so for the addition?

MR. BEDETTI: No, sir.

MR. KANE: No easements?

MR. BEDETTI: No, sir.

MR. KANE: And no creating of water hazards?

MR. BEDETTI: No, sir.

MR. KANE: Any further questions from the board?

MR. LUNDSTROM: Should we do two motions, one for the addition and one for the shed?

MR. KANE: That would be fine so there will be two proposals.

MR. LUNDSTROM: I'll make a motion that the ZBA approve the variance request by Mr. Francis Bedetti for the shed which is the 7 foot side yard setback and 7 foot rear yard setback.

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MR. TORPEY: I second that.

ROLL CALL

MS. GANN	AYE
MR. LUNDSTROM	AYE
MS. LOCEY	AYE
MR. TORPEY	AYE
MR. KANE	AYE

MR. KANE: On the second?

MR. LUNDSTROM: I will follow that with a motion that the zoning board approve the addition for Mr. Francis Bedetti as identified on the agenda of the Zoning Board meeting August 27 regarding 6.5 foot side yard setback and 10.7 foot total side yard setback.

MS. GANN: I'll second the motion.

ROLL CALL

MS. GANN	AYE
MR. LUNDSTROM	AYE
MS. LOCEY	AYE
MR. TORPEY	AYE
MR. KANE	AYE

JASON\_LOWE\_(07-33)

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MR. KANE: Request for 14 foot rear yard setback for proposed 14 foot x 26 foot attached rear deck at 519 Shore Drive.

Mr. Jason Lowe appeared before the board for this proposal.

MR. LOWE: Good evening, my name is Jason Lowe, I live at 519 Shore Drive, New Windsor, New York. And I recently put an addition on the house I grew up in and basically requesting to put a deck on the back of the house 14 x 26.

MR. KANE: Cutting down any trees, substantial vegetation in the building of the deck?

MR. LOWE: No.

MR. KANE: Create any water hazards or runoffs?

MR. LOWE: Not at all.

MR. KANE: Any easements running through the area where the deck is proposed?

MR. LOWE: No.

MR. KANE: Other decks in your neighborhood of similar size?

MR. LOWE: Yes.

MR. BABCOCK: Mr. Chairman, just add in this zone the rear yard requirement just changed from 40 to 50 so if he came before the zoning change he'd only be requiring a 40 foot variance. I guess it's all in the timing.

MR. KANE: How high is the deck going to be off the

ground?

MR. LOWE: I'd say probably eight to ten feet.

MR. KANE: Do you have any doors or glass sliding doors coming off from the deck?

MR. KRIEGER: From the house to the deck?

MR. LOWE: Yes.

MR. KRIEGER: So if the deck weren't there a person exiting the sliding door would likely sustain serious physical injury?

MR. LOWE: Yes.

MR. KANE: At this point, I will open it up to the public, ask if there's anybody here for this particular hearing. Seeing as there's not, we'll close the public portion and ask how many mailings we had.

MR. BABCOCK: We had 44 mailings with no returns.

MR. LUNDSTROM: One question. Mr. Lowe, in your, on the agenda it says your request for proposed 14 x 26 foot attached rear deck you have yet in the photographs it shows there's one there. Are you planning on tearing that down?

MR. LOWE: Yeah, that's torn down.

MR. LUNDSTROM: That has been torn down?

MR. LOWE: Yeah and the new addition comes out to the, to where the old deck was.

MR. LUNDSTROM: So what you're talking about extending from there further?

MR. LOWE: Yes.

MR. KANE: Any further questions?

MR. LUNDSTROM: In the general area, are you aware of any other decks that would be that close to the lake?

MR. LOWE: Yeah, probably like three houses over to the left I would say there's a lot of them actually.

MR. KANE: If you look down the pictures you can see the gazebo's going right down and another deck that seems that it would be closer on this particular picture here. Any further questions? Okay, I'll accept a motion.

MS. LOCEY: I'll offer a motion to grant the requested variances on the application of Jason Lowe as detailed in the Zoning Board of Appeals agenda dated August 27, 2007.

MR. TORPEY: I'll second that.

ROLL CALL

MS. GANN	AYE
MR. LUNDSTROM	AYE
MS. LOCEY	AYE
MR. TORPEY	AYE
MR. KANE	AYE

TOWER\_MANAGEMENT\_(07-34)

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MR. KANE: Request for 64 square foot for existing freestanding sign at 366 Old Forge Hill Road.

Ms. Angela Boyle appeared before the board for this proposal.

MS. BOYLE: Angela Boyle, Tower Management, 336 Old Forge Hill Road.

MR. KANE: Tell us what's going on.

MS. BOYLE: We have a sign that's been there since approximately 1994, I believe, and I didn't have a permit for it, it has writing on both sides so it's considered twice the size of its actual size so I'm requesting a variance for the difference.

MR. KANE: Any illumination on the sign?

MS. BOYLE: No.

MR. KANE: Does the sign itself, well, let the record show from the pictures that I have that it doesn't seem to me that on Old Forge Hill Road that the sign itself impedes the vision of any traffic traveling in either direction. How long has the sign been up again?

MS. BOYLE: Since about I want to say 1994.

MR. KANE: Any complaints about the sign formally or informally?

MS. BOYLE: No, a lot of compliments.

MR. KANE: Nice looking sign.

MS. LOCEY: So this is just to correct not knowing that because it's double sided it's twice the square footage



you thought you were complying because it's within 64 square feet if you just counted the one side?

MS. BOYLE: Right, I didn't know they counted both sides.

MR. KANE: You don't get to use both sides.

MS. BOYLE: I wasn't aware of that.

MR. KANE: At this point, I will open it up to the public. Anybody here for this particular hearing? Seeing as there's not, we'll close the public portion of the hearing and ask how many mailings we had.

MR. BABCOCK: We had 142 mailings with no returns.

MR. KANE: Any further questions from the board?

MR. LUNDSTROM: One observation from the photos that are there it appears that the area around the sign is well landscaped and well maintained?

MS. BOYLE: Yes.

MR. LUNDSTROM: Has it been that way forever?

MS. BOYLE: And a day.

MR. LUNDSTROM: And you intend to keep it well maintained and landscaped?

MS. BOYLE: Yes.

MR. KANE: Further questions at this point? I'll accept a motion.

MS. GANN: I will offer a motion to grant Tower Management their request for 60 foot, I'm sorry, 64 square foot for existing freestanding sign at 366 Old

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Forge Hill Road in an R-4 zone.

MS. BOYLE: It's 336.

MR. BABCOCK: That was a typo, I didn't change that.

MS. GANN: 336, thank you.

MR. TORPEY: I'll second that.

ROLL CALL

MS. GANN	AYE
MR. LUNDSTROM	AYE
MS. LOCEY	AYE
MR. TORPEY	AYE
MR. KANE	AYE

VITO\_A.\_RIZZI\_(07-26)

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MR. KANE: Request for interpretation and/or use variance to extend commercial use into R-4 zone at 287 Windsor Highway.

Daniel Bloom, Esq. and Mr. Anthony Coppola appeared before the board for this proposal.

MR. COPPOLA: I want to make sure you have the revised copies.

MR. LUNDSTROM: For the record, may I ask the name of the people representing this case?

MR. COPPOLA: My name is Anthony Coppola, I'm the architect, I did not prepare this plan, this plan was prepared by Greg Shaw. My office prepared the building drawings.

MR. BLOOM: Daniel J. Bloom, I'm the attorney from Bloom & Bloom, P.C. representing the applicant, Mr. Vito Rizzi. For the record I believe this is a continuation of the prior public hearing, Mr. Chairman.

MR. KANE: That's correct. Tell us what you changed.

MR. COPPOLA: Thank you. From the last public hearing last month there was a lot of comment about the rear of the building, the buffer area, the area between the building that we're proposing and the residences in the rear. So a couple changes after the meeting, I spoke to Greg Shaw, the engineer, and the following changes were made in response to that meeting. First of all, this plan indicates a clear 50 foot wooded buffer area so that's an area that's going to be basically always green and what he's done he's indicated a boundary kind of a U-shaped boundary that wraps around which is the existing wooded area to remain so that wooded area is included in the buffer. And it also includes along the

property line so it forms a U. He's relocated some additional evergreens in the center, they're showing seven plants now but that's subject to change but the idea basically is to leave the existing--

MR. KANE: Fifty foot straight line going straight across?

MR. COPPOLA: Right, and basically intersperse these into the existing so obviously when you're out there probably not going to be like this, if there's a space they would, you know, introduce the new plantings but leave everything that's there. So this is the idea the intent here is to supplement what's there, not to clear cut there and plant new but basically leave everything that's there and add these to what's there. So there was also landscaping about the retention pond basically in the first version of this, it has not been designed yet as I thought, it's just a designated area but Greg has basically taken a look at it, reduced the size of that area and then also basically indicated to me that the planning board would require a fence around that area so there was a lot of discussion about the fence, would there be a fence around the retention area, yes, there will be. The planning board he basically said they require that as a matter of record and as a matter of practice probably a black vinyl fence with mesh on it, something like that. So those were basically the changes on this plan. The front of the property remains the same, he did look at moving the building forward towards Windsor Highway but basically what happens in that scenario is that the parking that's there is the parking that's required to be there. I think it's one space per 150 square feet, so any attempt to move this building forward basically results in the parking being relocated to the rear of the building. And I think the intent of the planning board or the consensus of the zoning board last month was not to introduce parking in the rear of the building so we did not do that, we did not move, we did not move this

building forward, the front parking lot and the location of the building is the same as it was last month. So all the changes to the plan have happened in the rear and that's basically what you have.

MR. KANE: Okay, so let's get right to it. Let's open up the public hearing.

MS. CAVALLO: I'm Kara Cavallo, K-A-R-A, C-A-V-A-L-L-O, I'm at 14 Lannis Avenue so I'm adjacent to the property. I think last time I talked about, you know, I have two year old twins, we have our family there, we have our home, we feel this would be inappropriate. They basically put the commercial area right up to my back yard which I think is inappropriate. But I think what has really struck me since then is I really feel strongly that they haven't met the legal standard. I'm also I practice law here in New York, I do civil litigation, I have been an attorney here for five years and just looked into this even from a cursory review of the case law in this regard I really feel that they are not meeting the legal standard regardless of the trees, regardless of any of that and I'd like to talk about that a little bit. Just looking at 267 (b)(2)(b) the statute that would control here for the use variance it provides that no such use variance shall be granted by a board of appeals without a showing by the applicant that the applicable zoning regulations and restrictions have caused an unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the board of appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located the applicant cannot realize a reasonable return. I'm just summarizing, demonstrated by competent financial evidence. Two, that the alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the district. Three, that the requested use variance if granted will not alter the essential character of the neighborhood and four

that the alleged hardship has not been self-created. I don't think they need any of the four, they need to meet all four. So just briefly to go through them one by one. They submitted evidence purported evidence that they do not make a reasonable return on the property, and I would submit that they need more than that, it's that they cannot within the, what's there as a commercial zone that they cannot make a reasonable rate of return. They have to have dollars and cents proof to this board that it's not possible, they cannot do it, I don't think they can make that showing given the fact that there are commercial neighbors that share the zoning like the Flag Guys, the pool company, I think that they could make a reasonable rate of return within the already zoned commercial lot. The applicant wants to put a deli there, this is a 14,000 square foot building that would house six tenants. And my understanding tends to be one of those tenants I think perhaps he can make a reasonable rate of return if only Anthony's Deli was right there and he can do it within the already zoned commercial. On the second point that the alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the district or neighborhood. I think the commercial neighbors there share the same zoning restrictions that residential buffer zone, my understanding goes along Lannis Avenue and that each of those commercial neighbors shares the same restrictions so therefore it's not.

MR. KANE: To a degree, it kind of narrows.

MS. CAVALLO: And that's written in the statute, it's construed by the case law, it's just not unique, they don't meet the standard as a matter of law. On the third point that the requested use variance if granted will alter the essential character of the neighborhood. That's what we talked about mostly last time, everyone in the neighborhood agrees it's absolutely going to change the character of the neighborhood. This is

about 1/3 of Lannis Avenue, I think is my understanding that's a big portion of Lannis Avenue, I don't know, I wish I had pictures, it's a beautiful residential street, it's, I think it's a dead-end street, it's quiet, there's trees. My family is protected from Route 32. We all are all the neighbors are I'm sure they'll speak to this point. This is a big chunk of Lannis Avenue that would change it, it would make what is a residential portion behind my own home and the neighbors' homes it would make that a commercial land. It's just, I don't think that you can really say with a straight face that it wouldn't change the character of the neighborhood. And I would be concerned about the slippery slope argument now it is different now, the neighborhood is commercial and now we have to deal with that and now we have retention ponds and fences and trees are not going to alleviate that. The hardship would be to the residents of Lannis Avenue if this were to pass, not the other way around. And then the fourth point is that the alleged hardship has not been self-created. As far as I can see in the case law which I know and I will quote hardship is self-created for zoning purposes where the applicants for a variance acquired the property subject to the restrictions from which he or she seeks relief so I think there again as a matter of law he knew when he bought it that it was zoned in this way.

MR. KANE: Just I'm not correcting anything they're going for an interpretation and/or use variance, so it's not just so you know not strictly for a use variance, just want to let you know so you can address that.

MS. CAVALLO: All right, so those are the points I'd like to make. I don't want to go through it too much. The other thing is my understanding of this is that 1/3 of this is commercial, 2/3 of this lot the residential, so he wants, the applicant wants to really, you know, sort of I see a lot of overreaching here, he wants to

change what's really predominantly a residential lot into a commercial lot and put this 14,000 square foot strip mall there where the neighbors, the commercial neighbors are all single house, much smaller units. So I won't go, you know, into great detail on that. I think that I just think that you need to look at the statute really that's your inquiry here, what do they need to prove legally, have they done it. I don't think so. I don't see how they have proved any of these four points. And then as far as 267 (b)(2)(c) the board of appeals in the granting of use variance shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant and at the same time preserve and protect the character of the neighborhood and health, safety and welfare of the community. If you do decide which I don't think you should and the neighbors don't think you should but if you did then it should be narrowly tailored to just what they need to address their hardship and which I don't see any hardship, I don't even want to really discuss that because I think that the inquiry stops with 267 (b)(2)(b) but you should be narrowly tailoring this and protecting the character of the neighborhood and my family and the families of the other residents here. I have a very informal sort of summary of arguments I have made here, if I might submit it to the board as part of the record. I'd like to thank you. That is all I have, thank you.

MR. KANE: Let the record show from Kara Cavallo we're entering into the record a briefing basically from Kara on her arguments against the interpretation and/or the granting of a use variance. Next?

MS. WASHINGTON: My name is Mary Washington, I live at 16 Lannis Avenue. I think this is a horrendous project to foist on us and I sort of got the feeling it's not in your back yards and from last time we met you could care less about our back yards and I don't think it's



right. Property values will certainly go down, the noise you're going to have not only daytime noise but cleaning crews coming in at night, you're going to have lights, you're going to have traffic and I see no need for a 97 space parking lot, the automats or the supermarkets have that but you don't see anything like that. This zoning for residential goes all the way from Vails Gate here and people have lived with it, they have businesses along the street and Mr. Rizzi had a going business and I'm sure if he comes back to the neighborhood he's going to have his old customers back plus new ones from the Patriot Ridge and that type of thing, he's not going to suffer any loss at all. I also have a letter from Diane Newlander, she's out of town today and couldn't come.

MR. KANE: Would you like to introduce that into the record?

MS. WASHINGTON: To the Chairman and Members of the ZBA: Regarding an application for a use variance submitted by Vito Rizzi on July 23, 2007, I would like to note that although the minutes from the August 13, 2007 ZBA meeting are available on the town web site, the minutes from the July 23 meeting which contain the record of the public hearing are not there. I don't know whether you're aware of that or not and she goes through the same thing that Kara just went through. In order to receive a use variance the applicant must prove unnecessary hardship, to prove this state law requires the application to show all of the following. That the property is incapable of earning a reasonable return for the initial investment, that the dollars and cents proof must be submitted, that the property is being affected by unique or highly uncommon circumstances, that the variance if granted will not alter the essential character of the neighborhood which it certainly would, that the hardship is not self-created, if one or more of the above factors is not proven state law requires that the Zoning Board

must deny the variance. I just wonder as an aside if you realize that domino effect if he gets this variance you're going to have every business from Vails Gate and they're all going to, they want to extend their business in the residential zone. Mr. Rizzi purchased the property consisting of 3 acres of land with a brick one family home for \$450,000, the property is within both residential and commercial zoning, he currently receives rent from the home, considering his initial investment and the value of the land alone this can hardly be considered a hardship, even if the property remained just as it is. Along the strip of land on Route 32 there are small commercial businesses all within the commercial zoning. If Mr. Rizzi who's owned and operated a successful delicatessen in New Windsor was to open such a business on this property it would be welcomed by all and certainly would not be operating under any hardship. The proposed project 14,000 square feet of mostly retail space and 97 parking spaces would drastically alter the essential character of any neighborhood, if there's any hardship to be addressed it is the hardship placed on us the neighbors by this project, we'll watch as the natural barrier is destroyed and the value of our property diminished. According to the table of use bulk regulations, the parking for commercial use is not permitted by right in the R-4 zone and requires a variance as well. It is the job of the ZBA to preserve, protect the character of the neighborhood and the health, safety and welfare of the community. I strongly am opposed to granting this use variance. Sincerely submitted, Diane Newlander.

MR. KANE: Can I have that for the record, please? Anybody else? Ma'am, did you want to say anything else?

MS. WASHINGTON: No, just I'm afraid of the domino effect if he does get it all the other businesses are going to want to encroach on the property. Right now

they've lived with it for years, I don't see why we can't continue.

MR. KANE: Thank you. Sir?

MR. STEIDLE: Bill Steidle. I appreciate the opportunity to speak tonight. My name is Bill Steidle, I live on Jackson Avenue in the Town of New Windsor. I wanted to begin by talking about process a little bit, I do speak before the planning board on occasion and in days passed I have provided testimony in a number of different forums. In each and every instance, I review the file, I review plans before speaking and I did so before the first public hearing. In this case, I attempted to review the plan that's up on the board a week ago today we filed a Freedom of Information Request, the plan was not in the file, it was not available. On Friday, last business day before today I called the Town Hall, I called for Myra and Myra was not in and requested that I come in and review the revised plan if in fact such a plan was available in the file. I was told that the plan was not available, there was no revised plan. Now I think that's unfair to the public, it's unfair to the residents, it's unfair to the board not to have the opportunity to review the plans before the meetings. And I'd just like to offer a remedy if I might, very simply, the board and the planning board should require that plans be submitted at least 10 days or 14 days prior to the hearing and that those plans be so date stamped to verify that submission. And that way the public and the board members have the opportunity to review the plans. I also have to say it was somewhat incredulous at the last meeting when the applicant submitted a financial data regarding hardship one of the criteria that has to be met, basic criteria, submitted it to the board and the board apparently had never seen that before and certainly the public did not and it was only by chance that the board didn't vote on the proposal on that occasion, I think that again is the case where

it's inappropriate, plans and reports have to be available prior to public hearings and prior to decisions so they can be reviewed. One other thing I think Diane brought it up a little bit there was some discussion at the last meeting that and I think it was very clear that the project could be worse that you could in fact develop a worse project on that site if it were, if the use variance were in fact granted. And it was also discussed that you could put parking in the rear of that site without a variance. I objected to that last time, I see no basis in law or regulations that in fact allows commercial parking lots in residential zones without a variance. And I think where this leads me is some of the residents of Lannis Avenue feel threatened by things that were said either by the applicant or by the board and we all have perceptions of what was said or what may have been said but I think it's unfortunate that people feel threatened in these instances. So I think we all should use due diligence to try, not try to make people uncomfortable and not to tell people that things could be worse. Now I want to tell you everything I have said thus far has no bearing on your decision, it has no bearing whatsoever as Kara indicated, your decision has to be based on the four criteria that were discussed, the criteria talks about making reasonable returns, talks about unique or highly uncommon circumstances, it talks about affects on the neighborhood and that's why I wanted to review the plan because that's my area of expertise. And the last is hardship. You know, I'll say to the board and I think Kara said it very well, if each of you consider those four criteria your decision will be very easy, you only have to find that the applicant does not meet one of those criteria to deny the use variance and I think unquestionably you will find that that is the case and the variance should be denied. Thank you.

MR. BABCOCK: Bill, just so you know about the plans the plans were here on time from the applicant, they

were cause Myra's out sick there's been a little confusion there, when my office called me and said that you and Diane had called and wanted a plan, I immediately came to Town Hall, pulled out the plan and said give me their number so I can call them and say it's available. And my office said that Diane was going to call back that afternoon because she was moving around and get the plans. So the day you called for it it was available for you, Bill.

MR. STEIDLE: I'm not pointing fingers. Anthony, I should mention I think the applicant has excellent consultants, Anthony is an excellent architect so I'm not pointing fingers, I just pointed out that mistakes happen but make sure the plans are available.

MR. BABCOCK: I apologize for that.

MR. KANE: Next? Sir?

MR. EVANS: Vincent Evans, 5 Lannis Avenue. I just want to repeat some of the things that have already been said, I believe they are my opinion and my wife's also who couldn't be here. I don't believe Mr. Rizzi has met the hardship condition that he claims to have, it wasn't brought up in any of the meeting last time we met but it just said that he received rent and that the rent wasn't sufficient enough to meet his expenses or to provide some additional income. It didn't go into any consideration how he was going to meet or generate that income, just that the fact that he had rent on the house, he wasn't developing it as a commercial business and he wasn't looking to do anything else with the property other than the rent from the tenant. The other thing is I object because I do believe it will set a precedent to other businesses on the highway if they see that they are able to get a variance for this piece then they would look to also get a variance sometime in the future. The third thing is I do believe it will create a hardship for the people who

border that property or the adjoining properties in the future and their livelihood could be affected by that. That's all I have to say.

MR. KANE: Okay. Anybody else? Ma'am?

MS. DEWITT: My name is Linda DeWitt, I live at 11 Lannis Avenue which is directly across from this project. We have lived there for 36 years and that buffer area has always been there and it's just not the first time that people have tried to extend their business in there to make a windfall, to make more money and we have fought it several times, I remember one was the transmission place but that just affected like I think one property. This affects four properties, about a third of the street. Now I'm looking directly into this project, all right, you have trees there but those trees are deciduous trees, they lose their leaves in the winter so we'll be looking right into it, we'll see all the lights, we'll see whatever goes going on there, the pond, whatever is going to be wide open to us and I'm very much opposed to this.

MR. KANE: Thank you. Sir?

MR. MC CARTHY: Phil McCarthy, 10 Lannis Avenue. Right now there's an existing stream through my back yard, from what I, my neighbor who's lived here 50 years he said it was a deer path now I guess road runoff goes through that path, there's no water easement through my back yard where this wading pool is, I don't know if that's going to drain through the existing little stream that I have back there but like I said, you can build a parking lot, I can fill in that stream any time I want and like I said, there's no existing water easement back there so that's all I have to say.

MR. KANE: Thank you.

MR. WESTFALL: Fred Westfall, 12 Lannis Avenue. Basically, I want to agree with Mrs. Washington, all the businesses on Route 32 have conformed to the zoning, nobody's ever gone further back, if they're granted the variance there's not going to be anything to stop anybody on 32 from doing the same thing. As it is now traffic on 32 is pretty bad during the day, you open up 32 to all the other businesses there you're not going to be able to move through the Town of New Windsor on Route 32. During the day, I don't try to get out, if I'm making a left I go out to 94 where I can make a right, you open up that stretch you're going to have to put a traffic light to control all the traffic. Again, I think it's going to encroach on all the properties, doesn't matter how many trees they put back there, you're still going to see the businesses. I'm opposed to it. Thank you.

MR. KANE: Thank you. Anybody else?

MS. MAXWELL: Fran Maxwell, 11 Hudson Drive. Can you tell me please how large is that pond supposed to be?

MR. COPPOLA: I can only tell you what's indicated on the drawings, let's see if I can get you a number here, well, it's probably indicated to be the width of the lot here is 250 feet so to me it looks like it's 150 feet by 75 to 100 feet in depth.

MS. MAXWELL: How deep?

MR. COPPOLA: Usually not more than 4 to 6 feet when they're full, I think, but it depends on percolation of the soil and the volume of the water that's generated. So basically kind of piggyback on the other man's question about the water runoff, again, there's a water course that runs through there, in theory that existing water course will remain the same, the same amount of water that flows there now will flow there after all these hard surfaces are built so the pre-development

runoff is the same as the post-development runoff, that's the purpose of the pond.

MS. MAXWELL: Now as we've seen in the past 20 years all those retention ponds that have been built from other developments are filling in and becoming marshes and totally filled in and not doing nothing but in the meantime they become mosquito ponds and I wonder if Lannis Avenue wants all the mosquitoes in their back yard, in their street and in Harth Drive and in Willow Lane and in Park Lane and all along Hudson. Developing a health hazard and having such a large pond for such a length of time that will then fill in its not very deep it will become shallow as it fills in with all the runoff and the soil you see that right across the street in those developments and what happened to their ponds, that's what I have to say and in other words I agree with all the other people that have said that and Bill of course Mrs. Washington they have all got valid points. Thank you.

MR. KANE: Thank you. Anybody else? Sir?

MR. BATAPAGLIA: Nick Batapaglia. I want to say something from a street other than Lannis, I agree with these people that there needs to be enforcement of the existing regulations about the size if you would and I'm just for enforcing what we already have as rules so let's abide by what we already have. Thank you.

MR. KANE: Thank you, sir. Anybody else? Okay, we'll close the public portion of the meeting, bring it back to the board. Further questions from the board?

MR. LUNDSTROM: Just a couple of observations, Mr. chairman, in looking through some of the printed material regarding zoning boards and actions they can take I'd like to read from a publication that was produced by the New York Planning Federation page 9-4, zoning variance, zoning variance permit exceptions,



permit exceptions to the rule and as such must be undertaken with caution and approved only with a strict letter where the strict letter of the law is met granting an unjustified variance establishing precedent and protection for equal protection challenges the community should be vigilant to afford it the substantial and thoughtful planning and zoning efforts that the community has worked hard to achieve. I bring that to the floor only because I know it's been said that we as a zoning board do not accept this established precedent and that's correct but the other thing is is by us taking certain actions can always subject the town to challenges under equal protection of the law. One of the questions that I have and let me direct this to Mr. Coppola, just to be very honest I'm somewhat disappointed with the new plan, I know one of the questions I asked at the last meeting was what could be done to minimize some of the parking in front, one of the ideas thrown out was the option of doing a variance for parking, I know the zoning board has done that before, second question I would ask and I know it's come up in zoning board decisions before is to get a use variance the owner must substantiate the fact that he cannot make a reasonable return without that. Also what the law says is what is the minimum that he needs to make a reasonable return does he need a building that's 14,000 square feet or could it be smaller and by doing that could that building be moved closer to the road with less parking spaces.

MR. COPPOLA: Let me just address kind of the geometry of what's here, not the financial aspects of it. The building could be made smaller but that doesn't get you there, it's eliminating the parking spaces to move this building closer.

MR. LUNDSTROM: But if you make it smaller the number of parking spaces gets reduced because you said the parking spaces are based on the square footage.

MR. COPPOLA: It does but it doesn't, I looked at that like cutting off a portion of this leg here and moving the building forward, you still end up, it's the parking that, it's the parking that's still under that scenario wants to jump back to the rear even if you lop off whatever, a portion of this building, 1,000, 3,000, 5,000 square feet you're still going to move it forward but you're not going to have enough parking unless even with that smaller amount you put some of that parking towards the rear.

MR. LUNDSTROM: But what about a parking lot variance?

MR. COPPOLA: Well--

MR. LUNDSTROM: Have you considered that?

MR. COPPOLA: Well, I guess my understanding was that parking was not the board really didn't want us to go in the direction to introduce parking in the rear.

MR. LUNDSTROM: We're not talking about the parking in the rear, we're talking about if the building were moved closer to the street.

MR. COPPOLA: You're talking about less parking?

MR. LUNDSTROM: Less parking that's an option that's there and I don't see that option having been investigated in this latest proposal.

MR. TORPEY: Excuse me, too, you know, the neighbors are talking about these trees that only have leaves on them half of the year, why is all these fine trees along the size of the property when both sides are commercial anyway? They're going to see each other, why aren't they addressing putting the trees in the back that are green all year so they'll totally see nothing all year round? How come there was no border built around that instead of leaving the trees that are

going to come and go?

MS. LOCEY: These are additional.

MR. TORPEY: These all just one spot, you're just separating commercial properties from each other, they're going to be commercial no matter what.

MR. COPPOLA: Right, the screening needs to be in the rear, not on the sides, but the intention of what we're introducing new maybe those whatever they are seven or eight or 20 whatever it is you really don't know until you go out there and find the spot for those so we don't know where those will end up.

MR. TORPEY: Talking about a new tree line says new edge of wooded area that wooded area is going to lose its leaves.

MR. COPPOLA: I don't think the intention is not to remove and I think everything there is deciduous, the leaves drop.

MR. TORPEY: Exactly, but if you took all these trees, you see how many trees you've got on the sides of the properties?

MR. COPPOLA: On the side yards.

MR. TORPEY: You're just going up against the transmission shop and a beauty salon and a flag place, they're the ones who are getting the privacy.

MR. COPPOLA: Yeah, maybe that does need to be screened on the sides.

MR. TORPEY: If you took off the trees you'd build such a wall you wouldn't see that place all year round.

MR. COPPOLA: I agree.

MR. TORPEY: Not in a bad sense but--

MR. COPPOLA: Right, then we would certainly be amenable to that, I mean, increasing the number of screening that's on here.

MR. TORPEY: This is where you'd want your wall on the back edge.

MR. COPPOLA: Correct.

MR. TORPEY: That's where you've got your problem, you don't have a problem on the side properties.

MR. COPPOLA: Correct.

MR. LUNDSTROM: Again, I think that substantiates another comment I made about the previous one had one line of trees and I suggested if we can move that pond upwards which it looks like you've done so you can have three lines of trees but again I don't see that on the plan so again there's a level of disappointment on my part. I think what happened at the last meeting and I felt bad because some of the public was saying that the feeling they got of this board was we didn't care and I think that's incorrect because I think we do care, this is our town as well as everyone else's town and we want to do what we can to help and protect and preserve the character of this town. Part of our job and again it's not an easy job, it's a very difficult job is we're asked to make decisions based upon plans that are presented to us, there are certain recommendations made at the previous meeting, again, I think a lot of us heard what the public was saying and hearing what the public was saying is different from what they were saying and we have to understand what they are saying, part of it was consideration for the children and grandchildren, I understand that you're saying the planning board will insist that there's a fence. The

other thing is property values and the closeness and the character of the community. The other thing is what is the minimum. Again, I go back to this what is the minimal size of a building that would give your applicant again the minimal and reasonable return. I don't think it's 14,000 square feet, I think it could be substantially less and I think you could always come back to the zoning board and ask for a variance on the number of parking spaces which may mean that you don't have to come back to the zoning board at all if that building could be put totally in the commercial space.

MR. COPPOLA: I mean we did speak about that and Mike kind of said that he thought that the town had increased the parking for retail because they found that that, that it wasn't working. It's newer now and I don't know if it's five years old or whatever it is the one space per 150 square feet, it used to be one space per 200 square feet, so we didn't pursue that aspect of it. I mean, there's a lot of spaces here absolutely and I can't say that there's not but we didn't pursue it that way.

MR. LUNDSTROM: I think that may have been a tactical error.

MR. COPPOLA: Well, there was a lot of stuff discussed and we tried to, I'm still listening.

MR. LUNDSTROM: The other thing I'm looking at here the plan for the new retail building you've got the shape of an L to give you a certain amount of square feet, I'm disappointed cause I thought that you were going to consider redoing that in some way, possibly lopping off part of the L and making part of it wider so it could be moved up further so it's not a major change. Again, I don't see that here.

MR. COPPOLA: Yeah, I mean, it is something that I went through the next day in, you know, looking at this

thing lopping off 10 feet, 20 feet of this portion and moving it up but it's just the parking doesn't permit you to do that, that's what I'm saying, you do lose parking spaces but don't lose enough spaces to get the building forward.

MR. LUNDSTROM: But now are you saying that you're convinced that this board would not give you a variance on parking spaces?

MR. COPPOLA: Well, I'm just saying that no, I'm not saying anything like that, I'm just saying that the direction I thought the direction was that the town thought that that parking was warranted but that's not my personal opinion. My personal opinion is this is a large lot but I may be wrong about that, you know, whether it's going to be filled at Christmas time or when the building is filled.

MS. GANN: I have a question regarding the retention pond, the outlet over here as of right now the building that you have out there is 14,000 square feet and you mentioned you gave us the logistics of how big that outlet pool will be. If in fact this building were to shrink in size would that in fact shrink in size of the outlet pool as well? Would it need to be as big as it is right now if you can shrink down the building size?

MR. COPPOLA: If you shrink the building size and the parking area so the size of that retention pond is a function of all your paved and hard surfaces so the pavement and the roof so you can see that you have just a huge amount of parking here you probably have twice as much parking and area as a 14,000 square foot roof.

MS. GANN: So if you reduce the amount of parking then your retention pond would be smaller?

MR. COPPOLA: Theoretically yes, yes, it would.

MR. TORPEY: Just don't have a large paved area.

MR. COPPOLA: You're still going to have a large paved area if you lop off 3,000 square feet of the building that's 20 spaces.

MR. TORPEY: Still going to have--

MR. COPPOLA: So you have 70 spaces instead of 95 or something like that.

MR. LUNDSTROM: What would be the minimal square feet of retail space if the, that the applicant would need to make a reasonable return, minimum reasonable return, is that something that can be identified?

MR. BLOOM: It in my opinion can be, Mr. Lundstrom, but I wouldn't venture a guess at it without consulting with our expert who did the calculations and submitted, Mr. Carhart submitted the report based upon this configuration and this size. But I have listened to this board this evening and obviously you misunderstood completely the direction the board wanted us to go with it, it's not the board's fault, it's our fault and so for that purpose, I'd respectfully request that this board consider continuing the meeting and giving us an opportunity to come back with a revised plan which hopefully will incorporate what I interpreted to be very constructive suggestions both from the board as well as the public.

MR. KANE: You can, personally, I think it's going to take some time to figure out what might really work on that spot as has been pointed out the commercial portion of that particular lot is about 1/3 and 2/3 as residential, I just, I don't see continuing it at this point, I think a newer application is a better way to go down the line because I think it should be done in a timely fashion. We have extended this for the good people back there, people don't like to live with that

kind of stress, again, it can come up again and again and that's a different thing but I don't see continuing this right here because I think it's going to take some work to put a good plan together that would seem reasonable and fit that particular space and pass everything by it and most people are correct, I don't think and I'm talking about the interpretation part that we would do because I don't see us passing anything that would be a use variance on it at this point. But my feeling here is not to continue after this point, I think a newer application down the line well thought out might be a better way to go. So as far as that I think that we're going to vote tonight on the application as presented.

MR. BLOOM: Very well.

MR. LUNDSTROM: Mr. Chairman, is it safe to assume Roberts Rules of Parliamentary Procedure direct us that any motion must be in the affirmative?

MR. KANE: Absolutely.

MR. KRIEGER: That's correct.

MR. LUNDSTROM: Mr. Chairman, with that in mind, if it's time for a motion I will be happy to make a motion.

MR. KANE: Let me just clarify there are no more questions from the any of the board members? I want this decided tonight, they have the ability as any homeowner does to go back to the drawing board, make another plan and come back down the line, you know, if it doesn't get approved they have, I'm not saying it's being approved or denied but I think we're going to settle this portion of the issue tonight and if it doesn't get approved then they need to go back to the drawing board and I think that's going to take some substantial effort.



MR. BABCOCK: But it will have to be readvertised so if you're on the list you'll be notified.

MR. KANE: It would be a brand new application.

MR. KRIEGER: It will be a new application all the same procedures would apply.

MR. KANE: If as Mike said if whatever design they come up with for that property puts them back in front of this particular board. With that said and no further questions from the board, I'll accept a motion and yes with Robert Rules it does have to be in the affirmative.

MR. LUNDSTROM: With that in mind, I will make a motion that this board grant the variance for Mr. Vito Rizzi as presented on the agenda of the Zoning Board of Appeals August 27, 2007 request for an interpretation and/or use variance to extend commercial use into an R-4 zone at 287 Windsor Highway in a C/R-4 zone, section, block and lot 37-1-52.

MS. LOCEY: Correction, 35-1.

MR. LUNDSTROM: Thank you.

MS. GANN: I'll second the motion.

ROLL CALL

MS. GANN	NO
MR. LUNDSTROM	NO
MS. LOCEY	NO
MR. TORPEY	NO
MR. KANE	NO

MR. KANE: Motion's denied, we have our next meeting September 10 and that's it. Motion to adjourn?

August 27, 2007

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MR. LUNDSTROM: So moved.

MS. GANN: Second it.

ROLL CALL

MS. GANN	AYE
MR. LUNDSTROM	AYE
MS. LOCEY	AYE
MR. TORPEY	AYE
MR. KANE	AYE

Respectfully Submitted By:

Frances Roth  
Stenographer